WONG KAH LUI

v.

RHB DELTA FINANCE BHD

HIGH COURT SABAH & SARAWAK, SIBU
SANGAU GUNTING JC
[CIVIL APPEAL NO: 12-2-2002]
16 JANUARY 2004

CIVIL PROCEDURE: *Summary judgment - Appeal - Hire-purchase agreement - Whether triable issues existed - Defences raised in affirmed affidavit - Whether inconsistent with defences pleaded in statement of defence - Whether credibility of overall challenge affected - Subordinate Courts Rules 1980, O. 26A r. 1 - Hire-Purchase Act 1967, s. 16*

HIRE PURCHASE: *Breach of agreement - Arrears of rental payment - Summary judgment granted for arrears claimed - Appeal against - Whether triable issues existed - Defences raised in affirmed affidavit - Whether inconsistent with defences pleaded in statement of defence - Whether credibility of overall challenge affected - Subordinate Courts Rules 1980, O. 26A r. 1 - Hire-Purchase Act 1967, s. 16*

CONTRACT: *Hire-purchase - Breach of agreement - Arrears of rental payment - Summary judgment granted for arrears claimed - Appeal against - Whether triable issues existed - Defences raised in affirmed affidavit - Whether inconsistent with defences pleaded in statement of defence - Whether credibility of overall challenge affected - Subordinate Courts Rules 1980, O. 26A r. 1 - Hire-Purchase Act 1967, s. 16*

This was an appeal by the defendant against the decision of the learned sessions court judge allowing the plaintiff's application under O. 26A r. 1 of the Subordinate Courts Rules 1980 for summary judgment against the defendant in relation to a hire-purchase agreement for the amount of RM119,905.31. The relevant issues that required consideration were: (i) the issuance and service of a 4th Schedule Notice (a requirement under s. 16 of the Hire-Purchase Act 1967 ('the Act')) and several repossession orders to the defendant; and (ii) whether the defendant's affirmed affidavit opposing the application ('AIO'), considered in its entirety and in the context of the whole case together with the manner of its presentation, had seriously dented the credibility of the defendant's overall challenge against the summary judgment application.

Held:

[1] On the facts, there was no clear evidence to show that the 4th Schedule Notice was sent to the defendant at his purported 24B or P.O. Box address; hence, it would appear arguable whether the 4th Schedule Notice was posted to the address given in the hire-purchase agreement. Hence, it seemed tenable that the issuance to the defendant of the 4th Schedule Notice and other pre-requisite notices required by the Act remained a triable issue. (p 67 c-d)

[2] The defendant, in a deliberate effort to pack in as many 'triable' issues as possible, seemed to have inadvertently gone off-tangent from the basic tenor of his defence. The defences pertaining to such matters as fraud, conspiracy, coercion and force raised in his subsequent AIO would appear not to be defences "over and above" the defences pleaded in the statement of defence, but rather defences substantially inconsistent or seriously out of tune with those pleaded in the statement of defence. Thus, it would appear that the situation in the instant case smacked of something suspicious in the defendant's mode of presenting his case. (p 75 d-f)

[3] Having considered all the relevant matters, the court would grant the defendant leave to defend conditional upon the defendant providing security for the plaintiff including payment into court of the amount claimed by the plaintiff. Accordingly, the defendant's appeal was allowed to that extent. (p 75 g-h)

[Ordered accordingly.]

Case(s) referred to:

Arab-Malaysian Merchant Bank Bhd & Ors v. Court Square Pelita Sdn Bhd & Ors [2000] 5 MLJ 273 ***(refd)***

Fieldbank Ltd v. E Stein [1961] 1 WLR 1289 ***(refd)***

Lin Securities (Pte) v. Noone & Co Sdn Bhd [1989] 1 MLJ 321 ***(dist)***

Lloyd's Banking Co v. Ogle [1876] 1 Ex D 262 ***(refd)***

Legislation referred to:

Hire-Purchase Act 1967, s. 16

Rules of the High Court 1980, O. 18 r. 8

Subordinate Courts Rules 1980, O. 14 rr. 14(1), 19(3), O. 18 r. 8, O. 26A r. 1

Other source(s) referred to:

Jeffrey Pinsler, *Civil Practice in Singapore and Malaysia*, Vol 1, 1999, pp V53B, V57, V109, V205A

For the appellant - Wong Ho Leng; M/s Wong Ho Leng & Co

For the respondent - Tonny Hii Yii Yik; M/s Yong & Wong

Reported by Suresh Nathan

a

JUDGMENT

Sangau Gunting JC:

The suit by RHB Delta Finance Bhd. (the plaintiff/'RHB') against Wong Kah Lui (the defendant/'WKL') is based on a hire-purchase agreement dated 28 May 1997 ('the HPA'), relating to a Mitsubishi Pajero V-46 Station Wagon ('the Pajero'). As at 24 April 1998, RHB says WKL owes them RM119,905.31, inclusive of overdue interest and charges.

b

The initial summons and statement of claim was dated 4 June 1998, but subsequently it was amended and re-amended on 7 January 1999 and 7 June 2002 respectively. WKL's defence dated 3 June 1999 was filed on the same day (3 June 1999).

c

By an application dated 25 October 2000 under O. 26A r. 1 of the Subordinate Courts Rules 1980 ('SCR'), RHB applied for a summary judgment, saying WKL's defence is a sham. The application is supported by an affidavit affirmed on 20 October 2000 ('AIS') by RHB's branch manager.

d

By an affidavit affirmed on 15 February 2001 ('AIO'), WKL opposed the application. Apparently by para. 2 of the AIO, he also relies on his defence dated 3 June 1999. The AIO was followed by RHB's branch manager's affidavit in reply affirmed on 28 February 2001 ('AIR'), and several other supplementary affidavits in support of RHB's application.

e

By an order dated 5 November 2002, the learned Sessions Court Judge allowed RHB's application, and judgment was entered against WKL for the sum claimed plus interest and costs. WKL was dissatisfied with that decision, and hence this appeal.

f

The Appeal

During the hearing of the appeal, several alleged triable issues were raised. One of these concerns the issuance and service of the 4th Schedule Notice (a requirement under s. 16 of the Hire Purchase Act 1967). A 4th Schedule Notice dated 3 February 1998 (exh. P2), and several repossession orders with dates ranging from 17 March 1998 to 6 January 1999 were purportedly issued and sent to WKL at P.O. Box 353, 96007 Sibu ('the P.O. Box address'). The address stated in the relevant HPA, however, is 24B Lane 24 Man Wong King Huo, Sibu ('the 24B address').

g

h

Anyway, in his AIO, while not specifically denying the existence of the P.O. Box address, WKL denies having been served with the 4th Schedule Notice or having received from RHB any "such notice or mail." As to the 24B address, he claims to know nothing about it, saying "I do not reside there.".

i

To support service on WKL of the 4th Schedule Notice, RHB exhibited Pos Malaysia Bhd.'s 'Kiriman Banyak Barang-Barang Berdaftar' dated 7 February 1998 ('P-3'). However, on that list, under 'Nama dan Alamat Penerima', only "27336/0 Wong Kah Lui – Sibu" and no address was written.

RHB tried to explain why the P.O. Box address was used. Implicit in RHB's explanation seems to be, that in another Sessions Court Suit No. SB 52-466-98, WKL had used that P.O. Box address (the relevant hire-purchase agreement dated 6 September 1997, O. 26A Notice of Application and WKL's opposing affidavit in that other case – were exhibited respectively 'CL10', 'CL11' and 'CL12').

P3 does not show to what address was the 4th Schedule Notice sent to. There is no clear evidence, therefore to show, that the 4th Schedule Notice was sent to WKL at his purported 24B or P.O. Box address. Based on what was enunciated by Ian Chin, J in the case of *Arab-Malaysian Merchant Bank Bhd. & Ors. v. Court Square Pelita Sdn. Bhd. & Ors.* [2000] 5 MLJ 273 at p. 303, it would appear "arguable whether (the 4th Schedule Notice) was posted to the address given" in the HPA. Hence, it seems to me tenable the implicit contention, that the issue whether P2 and the other prerequisite notices required by the Hire Purchase Act 1967 ('the Act') purportedly issued against and sent to WKL in the same manner as P2, remains a triable issue.

As earlier indicated, there are other alleged triable issues raised by learned counsel for the defendant/appellant, but in view of what I am going to consider hereinafter, I do not propose to deal with them.

The Defendant's Mode Of Presenting His Case

In para. 3 of his defence, WKL avers, that "the parties had intended that the Hire Purchase Act 1967 ... and the provisions thereunder apply to the hire purchase transaction herein." Under para. 2 of his defence, WKL admits to the HPA "as stated in para. 2 of the amended statement of claim." In the said para. 2 of his defence, WKL's only complaint relates to his denial of RHB "... (having) purchased and/or have become the owner or had title to the said (Pajero) ..." Concerning RHB's averment in para. 4 of the re-amended statement of claim, that "the said (Pajero) was delivered to the defendant in good order and condition," WKL in para. 7 of his defence merely pleads "... (he) has no knowledge of para. 4 ..."

The focus of rest of the pleadings in the statement of defence seems to be mainly on various alleged contravention against or non-compliance with provisions of the Act. For instance, WKL says certain provisions of the HPA "were and are at all material times, unconscionable and unreasonable and thereby void under the Act."

Now, about 20 months after the filing in court on 3 June 1999 of his defence, it seems suddenly WKL sprung a surprise. He appears to have done that in his AIO. In that affidavit, WKL appears to have embraced his defence, but at the same time, he appears to have drastically shifted the basis of his challenge against RHB's summary judgment application. More specifically, a substantial part of the basis of WKL's challenge as disclosed by his AIO, seems seriously inconsistent with a substantial part, if not the whole of the basis of his challenge to the summary judgment application, as disclosed by his defence.

It is now proposed to scrutinize the AIO more closely, and to consider whether, considered in its entirety and in the context of the whole case as disclosed by the pleadings, affidavits and submissions of both parties, the manner of its presentation (particularly concerning the averments relating to fraud and conspiracy) has seriously dented the credibility of WKL's overall challenge against RHB's summary judgment application.

To begin with RHB's averment in their AIS para. 6, that "(WKL) is and was at the commencement of this action, justly and truly indebted to the plaintiff for the sum of RM119,905.31 ..." appears not to have been specifically denied by WKL in his defence. In fact, WKL in his AIO did not even make any reference to that paragraph.

By para. 3 of his AIO, WKL does maintain what he had pleaded in his defence: that at the time of the execution of the HPA, RHB was not the owner of the Pajero, and "even if (RHB) was the owner, the said agreement was and is nevertheless unlawful and unenforceable under the Hire Purchase Act."

WKL in his AIO then goes on to say, that the HPA "was not duly completed prior to it being executed by me," and that he does not know the address 24B, Lane 24, Jalan Wong King Huo, Sibu, the place where based on the HPA the Pajero "will be housed ..."

In addition to merely denying RHB's averment in para. 9 AIS, that "the plaintiff delivered the said vehicle to the defendant in good order and condition," WKL says "I have never seen the said vehicle." In my view – it is here, that in relation to his overall attempt to raise triable issues, WKL has inadvertently started to go off tangent.

It is to be recalled in his defence filed some 20 months prior to the filing of the AIO, WKL never specifically traversed RHB's pleading in para. 4 of the statement of claim, that "the said (Pajero) was delivered to (WKL) in good order and condition." Instead, in para. 7 of his defence, he pleaded merely, that he has no knowledge of para. 4.

Quite clearly, the said para. 4 contemplates of two specific averments: that the Pajero was delivered to WKL, and that it was delivered to WKL in good condition. Therefore, and in compliance with O. 14 r. 19(3) SCR (similar to O. 18 r. 13 Rules of the High Court 1980 (RHC)), it was obligatory for WKL to have specifically traversed those pleadings as disclosed by the said para. 4. But he did not; instead, it seems his pleading in the said para. 7 smacks of ambiguity and, perhaps, to some extent, evasiveness. So had there been an application on the part of RHB to strike out the defence under O. 14 r. 21 SCR (similar to O. 18 r. 19 RHC), the said para. 7 probably would not have withstood a challenge based on its formulation not being in compliance with O. 14 r. 19(3) SCR.

One could, of course, interpolate that by the said para. 7, WKL must have meant he is denying both the delivery to him of the Pajero, and that the Pajero was so delivered in good condition. But strictly in the context of the defence itself, could one really be sure that, that is what WKL actually meant? By the way the said para. 7 is worded, does not it provide a room for WKL to make an about turn and say, he only meant to say he has no knowledge of only one of the said two averments in the said para. 4? In my view, there is. Only WKL would know for sure what he actually meant by saying he has no knowledge of para. 4. The point here is that RHB's pleading in para. 4 is clear and specific. WKL could and should have specifically traversed that pleading. Otherwise, it is still capable of multiple interpretations. Perhaps, it is this type of situation that O. 14 r. 19(3) SCR seeks to avoid, so that the issues between the parties could more speedily and properly be narrowed down.

Anyway, in dealing with the O. 26A application, and as earlier indicated, the question then becomes: whether in WKL's merely saying in para. 7 of his defence that he has no knowledge of para. 4 of the statement of claim, he has thereby raised a triable issue. As earlier discussed, the said para. 7 smacks of ambiguity and evasiveness. So the said para. 7 cannot be said to be capable of raising a triable issue.

In fairness, however, it must be pointed out, that some 20 months after the filing of the defence, in para. 5 of his AIO, WKL does seem to have somewhat narrowed down on what he meant by his having said he has no knowledge of para. 4 of the statement of claim (repeated in para. 9 of the AIS). In para. 5 of his AIO, he says he denies the said para. 9 of the AIS and adds: "I have never seen the said vehicle." Now, had WKL been forthcoming and frank right from the start – not to mention about the requirement of O. 14 r. 19(3) SCR – he could have easily included an averment to that effect in his defence. Anyway, this averment (para. 5 AIO) seems to have marked the starting point of what appears to be WKL's sudden change of focus – particularly the averments in his AIO concerning fraud and conspiracy, a matter he never raised in his earlier defence.

In *Civil Practice in Singapore and Malaysia* Vol. 1 by Jeffrey Pinsler © 1999 at p. V53B, it is *inter alia*, stated:

> In *Wallingford (John) v. Mutual Society* [1880] 5 App. Cas. 685, Lord Blackburn said of affidavits which seeks to raise triable issues:
>
> > ... they must ... condescend upon particulars. It is not enough to swear, 'I say I owe the man nothing' ... You must satisfy the judge that there is a reasonable ground for saying so. So again if you swear that there was fraud, that will not do. It is difficult to define it, but you must give such an extent of definite facts pointing to fraud as to satisfy the judge that those facts make it reasonable that you should be allowed to raise that defence. And in the like manner as to illegality, and every other defence that might be mentioned.

At p. V57, *Civil Practice in Singapore and Malaysia (supra)*, the learned author says:

> In making its determination, the court would normally rely on the content of the affidavits ... (T)he test, according to Glidewell, LJ – (in *National Westminster Bank plc v. Daniel* [1994] 1 All ER 156) should be framed in the following manner: 'Is what the defendant says credible? If it is not, then there is no fair and reasonable probability of him setting up a defence'.

Also pertinent seems to be the learned author's subsequent comment at p. V109:

> Even an arguable case may not assist a party in obtaining leave to defend if by doing so he is raising two inconsistent cases (emphasis added).

Reverting to the instant case, a scrutiny of both WKL's defence and AIO would quite clearly indicate, that the emphasis or focus of each of them substantially differ from the other. Due to the substantial difference in the overall focus or emphasis, WKL gives the tacit impression, perhaps inadvertently, that he is in substance actually raising "two inconsistent cases."

As earlier indicated – due to RHB's para. 4 pleading in its statement of claim being sufficiently clear and specific, and anyway – there is that O. 14 r. 19(3) SCR requirement, WKL should have specifically traversed it. He chose not to do so. Now, even if the said para. 7 pleading in WKL's defence were to be taken as also denying the delivery to him of the Pajero, still such a pleading cannot be taken to mean WKL has thereby specifically pleaded fraud and conspiracy, particularly in the context of O. 14 r. 14(1) SCR (similar to O. 18 r. 8 RHC). Matters such as fraud are very serious matters, and as such cannot be easily overlooked. It would have been, in any case, in tune with plain common sense and logic, that – had fraud actually been perpetrated on WKL or even perceived by him to have been perpetrated upon himself, WKL would have forthwith stated so specifically in his defence. The fact that he

did not do so, quite clearly indicates probable doubt as to the *bona fide* or genuineness of such a line of defence, subsequently raised for the first time in his AIO.

In my view, "... (admitting) (in the defence) to the Hire Purchase Agreement as stated in para. 2 of the amended statement of claim," and then, thereafter, focusing on the alleged unconscionableness and unreasonableness of certain provisions of the HPA, and on alleged contravention against provisions of the Act, clearly gives the impression WKL is not denying the existence of the HPA. The tenor of his defence appears to be, that he is merely challenging the enforceability of certain provisions of the HPA, and that certain mandatory provisions of the Act (concerning which in WKL's words "the parties had intended" to be applicable) have not been complied with.

In contradistinction, in his AIO, for the first time WKL makes a specific averment, that he has "never seen the said vehicle." Then thereafter, as if to provide a basis for such an allegation, WKL makes averments to the following effect:

(a) one Lim Seng Chik ('Lim') coerced him into entering the HPA, which "was not duly completed prior to it being executed by me;"

(b) the alleged coercion and duress worked on WKL presumably because in a purported oral loan agreement between Lim and one Lau Kah Siong (who allegedly had since disappeared with "massive debt and liabilities,") WKL had stood as a guarantor;

(c) WKL was forced by Lim to sign a hire-purchase agreement in blank, and contrary to what is stated in the HPA, WKL signed the purported blank HPA, not in the presence of Sia Chai Kiong (whom WKL allegedly does not even know of), but in the presence of Lim:

(d) WKL believes it was Lim (not himself) who "(supplied) the plaintiff his (WKL's) personal details "subsequent to my execution";

(e) WKL was "never served with a copy of the HPA";

(f) RHB "had delivered the said vehicle to Lim";

(g) "there was a conspiracy between the plaintiff and Lim with respect to the said vehicle and its hire-purchase thereof;

(h) RHB committed fraud as in respect of the Pajero, no down payment was ever paid to the dealer Tet Lee Trading Co., and that the price thereof "was jacked up as part of the conspiracy or for the purpose of entering into the hire-purchase agreement."

Now, in the same breath WKL alleges the HPA to be unenforceable as it "was/is a bill of sale and was entered into to cloak a moneylending transaction which was/is illegal of which (RHB) was not licensed." Earlier on in his AIO, WKL alleges the HPA "was and is nevertheless unlawful and unenforceable **under the Hire Purchase Act**" (emphasis added).

WKL's averments in his AIO indicate that his entering into the HPA was the result of coercion and duress, and that fraud and conspiracy was perpetrated in the formation of the HPA. Such an allegation if proven to be true would render the HPA *void ab initio*.

If WKL actually had such a line of defence in mind right from the start, it seems awkward to say the least, that he admits those provisions of the HPA as mentioned by para. 3 of the re-amended statement of claim, and then thereafter raises what appears to be his only complaint in respect thereof: that RHB did not have the title to the Pajero and that those provisions "were and are ... unconscionable and unreasonable and ... void under the (Hire Purchase) Act ... and ... are ... unenforceable ..." WKL then focuses his complaint on "para. 3(c), (d) and (f) of the re-amended statement of claim and says those paragraphs, "excluded, modified and/or restricted the operation of the Act and are therefore void ..."

Now, as with the rest of WKL's allegation in the AIO, his complaint based on his defence as I have just alluded to, does not seem to indicate anything that touches on coercion, duress and/or fraud and conspiracy. In fact, none of the pleadings in the defence seem to touch on any matter which could render the HPA *void ab initio*. So for instance, the averment that WKL was coerced into signing a blank hire-purchase agreement form, which presumably resulted in the formation of the HPA in the instant case, was raised for the first time in his AIO. How could WKL have overlooked to include in his defence, such serious and crucial matters as coercion and fraud? The irresistible inference is that such a line of defence is probably an afterthought. In any case, such a line of defence seems substantially inconsistent with the pleadings in the defence, thereby casting "real doubt about the (defendant's) good faith." (See *Fieldbank Ltd. v. E. Stein* [1961] 1 WLR 1289 as cited in *Civil Practice in Singapore and Malaysia (supra)* in a passage that would hereinafter be quoted).

By both the defence and the AIO, it seems obvious WKL is trying to raise, perhaps as many triable issues as possible. The question however is: in the way WKL presents his challenge to RHB's O. 26A application, particularly in the context of the averments in his AIO as compared to the pleadings in his defence, "Is what the defendant says credible?" (per Glidewell, LJ in *National Westminster Bank plc (supra)*). In the circumstances of this case and based on the foregoing analysis, the answer to this question must be in the negative.

In *Civil Practice in Singapore and Malaysia (supra)*, it is stated on p. V205A:

> In *Lloyd's Banking Co. v. Ogle* [1876] 1 Ex. D 262 Bramwell B said that conditional leave ought only to be granted '... when there is something suspicious in the defendant's mode of presenting his case.'
>
> ...
>
> Indeed, 20 years earlier, Devlin LJ in *Fieldbank Ltd. v. E. Stein* [1961] 1 WLR 1289 – was 'very glad' to see the relaxation of the restrictive approach because in his words: 'I think any judge who has sat in Chambers to hear summonses under Order 14 has had the experience of a case in which, although he cannot say for certain that there is not a triable issue, he is nevertheless left with a real doubt about the defendant's good faith ...

The defendant's attempt to apply the ratio decidendi in *Lin Securities (Pte) v. Noone & Co. Sdn. Bhd* [1989] 1 MLJ 321, to the circumstances and facts of the instant case, in my view, has given rise to considerable difficulties. I had actually requested the parties to submit further on a number of issues, including the applicability or otherwise of *Lin Securities* to the facts and circumstances of the instant case.

In the further written submission dated 10 October 2003 (p. 4 bottom to p. 5) learned counsel for the appellant seems to imply that – where there is a defence filed, and if concerning his suit against the defendant the plaintiff chooses to apply for a summary judgment, instead of striking out the defendant's defence, then "the defendant may rely entirely on his affidavit in opposition and is not bound by his pleadings in his statement of defence. He may **abandon** his pleadings in his defence **altogether**" (emphasis added).

With due respect to the learned counsel for the defendant, in my view the non-necessity to file a defence – does not necessarily mean that in all O. 26A cases, "the question of pleadings does not arise." So for example, where – as in the instant case – the defendant has filed a defence, then by that defence the defendant must surely have thereby intended to show the existence of one or more triable issues. So to say "the question of pleadings does not arise" is, with respect, not entirely accurate. The defence filed in must surely be intended to be considered by the court to see whether or not it discloses any triable issue.

I am here not embarking upon the issue whether the defendant's defence discloses a reasonable defence. After all in this case, the plaintiff chose to go by way of an application for a summary judgment under O. 26A SCR. A perusal of O. 26A, however, quite clearly indicates that in such an application, the main issue to be considered is still, *inter alia*, whether a defendant has any defence to the plaintiff's claim. So even in a situation where the defendant

has not filed a defence, the defendant would still have to show that he has a defence, and the usual way to do this is to show that there is a triable issue or issues.

As referred to earlier, learned counsel for the defendant in his written submission dated 10 October 2003 says: "(the defendant) may abandon his pleadings in his defence altogether." With due respect, it must be pointed out, that in the circumstances of the instant case, it seems no longer possible for the defendant to abandon "his pleadings in his defence ..." The defendant's having embraced his defence dated 3 June 1999 is clearly indicated in his AIO para. 2, which says: "In opposition to the plaintiff's notice of application dated 25 October 2000, I rely on my defence dated 3 June 1999."

It would appear, therefore, that even based solely on the defendant's having relied on his defence, in dealing with the O. 26A application, this court would have to equally look into the defendant's defence together with whatever matters raised by him in his subsequent AIO.

In *Lin Securities (Pte) v. Noone & Co. Sdn. Bhd (Klang Jaya Bahru Development Bhd., Third Party) (supra)* it was, *inter alia,* held:

> Order 14 r. 4(1) provides that a defendant may show cause against an application for summary judgment by affidavit or otherwise. He is entitled to show at the hearing of the O. 14 application that over and above what has been pleaded in the statement of defence he has other defences. The issue at an O. 14 application is whether the defendant has a defence and not whether the statement of defence provides him with a defence.

In *Lin Securities* the defendant had filed a statement of defence, in which it was *inter alia* contended "that the contract is void in that it was illegal or against public policy or is in any event unenforceable." At the hearing of the O. 14 summons, a point not pleaded in the statement of defence was taken up by counsel for the defendants: that "the law governing the contract in which the suit was based was Singapore law and accordingly the matter was in any event not suitable for disposal summarily." The reliance on the foreign law was objected to by counsel for the plaintiffs, presumably on the ground that that point was not pleaded in the statement of defence. This objection was held to be misconceived.

In my view, *Lin Securities* is distinguishable from the instant case. In the former case, the foreign law point subsequently relied on – although not pleaded in the statement of defence, does not seem to be one of those matters contemplated by O. 18 r. 8 RHC (similar to O. 14 r. 14 SCR). Also, the foreign law point is something which could excusably be initially overlooked, as it is not something so glaring as fraud, duress and conspiracy. Furthermore, in *Lin*

Securities, the defendants' earlier pleadings concerning the contract being void in that it was illegal or against public policy, does not appear inconsistent with the defendants' subsequent reliance on the foreign law point. Indeed, the foreign law point could be considered a defence **"over and above"** what has been pleaded in the statement of defence (emphasis added).

In the instant case, fraud is a matter contemplated by O. 14 r. 14 SCR, and hence, it should have been specifically pleaded in the statement of defence. In any case, matters such as fraud, conspiracy, coercion and force ("(forced) to sign a (blank hire purchase) agreement") – are so glaringly serious that one could justifiably conclude: such defences could not possibly have been overlooked to be right away included in the statement of defence had such defences been genuine.

It seems that in his deliberate effort to pack in as many 'triable' issues as possible, the defendant inadvertently goes off-tangent from the basic tenor of his defence. The defences pertaining to such matters as fraud, conspiracy, coercion and force raised in his subsequent AIO, would appear to be **not** defences **"over and above"** the defences pleaded in the statement of defence (emphasis added), but rather they are defences substantially inconsistent or seriously out of tune with the defences as pleaded in the statement of defence. 'Over and above', after all, means "in addition to", (*Collins Concise English Dictionary*, 3rd edn 1992). Now when 'something' is inconsistent with or worse still contradictory to another matter, that 'something' can no longer be said to be 'in addition to' that other matter. In fact, due to the inconsistency or contradiction, that 'something' could potentially reduce that other matter to nothingness or *vice versa*. In the circumstances, therefore, the defendant cannot rely on *Lin Securities (supra)*. Thus, it would appear, that the situation in the instant case, smacks of "something suspicious in the defendant's mode of presenting his case" (see *Lloyd's Banking Co. v. Ogle* [1876] 1 Ex. D 262 as cited in *Civil Practice in Singapore and Malaysia (supra)* at p. V205A),

Conclusion

Having considered the pleadings, the notice of application, the affidavits and the submissions of both parties, while I am inclined to grant the defendant leave to defend, for the reasons adumbrated above, such leave would have to be made conditional upon the defendant providing security for the plaintiff, including paying into court the amount claimed by the plaintiff. Accordingly, the defendant's appeal is allowed to that extent. The proportionate costs here and below to the appellant to be taxed unless agreed.